Ong Thye Peng v Loo Choo Teng & Ors

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–7 OF 2006(P)
ARIFIN ZAKARIA CJ (MALAYA), HASHIM YUSOFF AND ZULKEFLI FCJJ
3 JUNE 2009

Civil Procedure — Appeal — Parties — Appeal to Federal Court — Whether appellant proper party — Whether appellant had interest in outcome of suit — Whether appellant entitled to appeal

Civil Procedure — Jurisdiction — Federal Court — Principles governing power of review — Motion to review and set aside Federal Court decision — Issues raised in motion already duly considered and dealt with in original judgment of Federal Court — Whether suitable case for review — Whether dissatisfaction with findings of law and facts a ground to warrant review — Strict requirement as to finality of judgment — Whether r 137 of the Rules of the Federal Court intended to enable relitigation of cases

The third to eighth respondents ('the respondents') applied by way of notice of motion to have the decision of the Federal Court in Civil Appeal No 02–7 of 2006(P) ('the appeal case') reviewed and reheard pursuant to r 137 of the Rules of the Federal Court 1995 ('RFC') to prevent injustice or to prevent an abuse of the process of the court. The respondents claimed that the Federal Court through the judgment of Augustine Paul FCJ in the said appeal case had erred in law when the learned judge held that s 60(3) of the Probate and Administration Act 1959 ('the Act') was applicable to the application made by the first and second respondents in the High Court for sanction of the sale and purchase agreement dated 8 January 1979 and that the principle of law decided in cases coming under s 60(4) of the Act are equally applicable to cases coming under s 60(3) of the Act. The respondents submitted that the relevant provisions applicable to the facts of this case were ss 16, 17 and 59 of the Trustees Act 1949 ('TA') and that s 60 of the Act had no application in its entirety. It was submitted for the respondents that the very foundation of the judgment of the Federal Court was destroyed and therefore was a nullity. The respondents also submitted that the appellant as a beneficiary had no right to challenge the sale except under s 17(1) of the TA.

Held, dismissing the application with costs:

(1) Rule 137 of the RFC does not actually confer jurisdiction on the Federal Court to hear any application or to make any order to prevent injustice or abuse of the process of the court. Rule 137 cannot be construed as conferring upon the Federal Court unlimited power to review its earlier decision for whatever purpose. The court only has the limited inherent power or 'inherent jurisdiction' in order to maintain its character as a court of justice (see para 6).

(2) The appellant was a beneficiary of the estate and was also one of the defendants in the High Court. He was therefore a proper party with an interest in the outcome of the suit in the High Court. No application was made to strike out the defendant (appellant) as a party. As a party to the civil suit the appellant was entitled to appeal against the High Court's decision and subsequently against the Court of Appeal decision (see para 14).

(3) The issues raised by the respondents in this motion for review were issues that had been duly considered and dealt with in the judgment of the Federal Court in the said appeal case. The Federal Court did not agree with the respondents on these issues and on their interpretation and/or application of certain laws such as s 60 of the Act. This was not a suitable case for a review by another panel of the Federal Court. The findings of the Federal Court both in law and on facts were matters of opinion. Even assuming the present panel disagreed with such findings made by the earlier panel of the court, that was not a ground that warranted a review of the decision (see para 15).

(4) The strict requirement as to finality as enunciated in *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 2 MLJ 137 and other cases applied full force here. To relitigate a case which has been heard and disposed of by the apex court was not one of the circumstances envisaged by r 137 for the Federal Court to entertain (see para 15).

[Bahasa Malaysia summary

Responden ketiga hingga kelapan ('responden-responden') memohon melalui notis usul untuk keputusan Mahkamah Persekutuan dalam Rayuan Sivil No 02–7 Tahun 2006(P) ('kes rayuan') disemak dan dibicarakan semula menurut k 137 Kaedah-Kaedah Mahkamah Persekutuan 1995 ('Kaedah') untuk mengelakkan ketidakadilan atau menghalang penyalahgunaan proses mahkamah. Responden mendakwa bahawa Mahkamah Persekutuan menerusi penghakiman Augustine Paul HMP dalam kes rayuan telah khilaf dari segi undang-undang apabila hakim yang bijaksana itu memutuskan

bahawa s 60(3) Akta Probet dan Pentadbiran 1959 ('Akta') boleh digunapakai untuk permohonan yang dibuat oleh responden pertama dan kedua di Mahkamah Tinggi bagi membenarkan perjanjian jual beli bertarikh 8 Januari 1979 dan bahawa prinsip undang-undang yang diputuskan dalam kes-kes di bawah s 60(4) Akta boleh dipakai dalam kes-kes bawah s 60(3) Akta. Peguam yang bijaksana bagi pihak reponden-responden menghujah bahawa peruntukan yang relevan dan boleh dipakai kepada fakta-fakta kes ialah ss 16, 17 dan 59 Akta Pemegang Amanah 1949 dan bahawa s 60 Akta tidak boleh dipakai pada keseluruhannya. Responden-responden menghujah bahawa asas penghakiman Mahkamah Persekutuan telah musnah dan oleh yang demikian dibatalkan. Responden-responden juga mengemukakan bahawa perayu sebagai benefisiari tidak mempunyai hak untuk mencabar jualan kecuali di bawah s 17(1) Akta Pemegang Amanah 1949.

Diputuskan, menolak permohonan dengan kos:

(1) Kaedah 137 Kaedah tersebut sebenarnya tidak memberikan bidang kuasa ke atas Mahkamah Persekutuan untuk mendengar sebarang permohonan atau membuat sebarang perintah untuk mengelakkan ketidakadilan atau penyalahgunaan proses mahkamah. Kaedah 137 tidak boleh ditafsirkan sebagai memberi kuasa tidak terhad kepada Mahkamah Persekutuan untuk menyemak keputusan sebelumnya untuk apa sahaja tujuan. Mahkamah hanya mempunyai kuasa sedia ada yang terhad atau bidang kuasa sedia ada untuk mengekalkan cirinya sebagai mahkamah keadilan (lihat perenggan 6).

(2) Perayu adalah benefisiari estet dan merupakan salah seorang daripada defendan-defendan di Mahkamah Tinggi. Oleh itu dia merupakan pihak berkepentingan dalam keputusan guaman di Mahkamah Tinggi. Tiada permohonan dibuat untuk membatalkan defendan (perayu) sebagai pihak. Sebagai pihak kepada guaman sivil perayu berhak untuk merayu terhadap keputusan Mahkamah Tinggi dan kemudiannya terhadap keputusan Mahkamah Rayuan (lihat perenggan 14).

(3) Isu-isu yang dikemukakan oleh responden-responden dalam usul untuk disemak semula adalah isu-isu yang telah dipertimbangkan dan dibincangkan dalam penghakiman Mahkamah Persekutuan dalam kes rayuan tersebut. Mahkamah Persekutuan tidak bersetuju dengan responden-responden atas isu-isu ini dan dalam interpretasi mereka dan/atau permohonan undang-undang tertentu seperti s 60 Akta. Ini bukanlah kes yang sesuai untuk disemak semula oleh panel lain Mahkamah Persekutuan. Dapatan Mahkamah Persekutuan dalam undang-undang dan fakta-fakta merupakan perkara pendapat. Walaupun dengan mengandaikan bahawa panel sekarang tidak bersetuju dengan dapatan yang dibuat oleh panel mahkamah

sebelumnya, itu bukanlah satu alasan yang membolehkan semakan semula keputusan tersebut (lihat perenggan 15).

(4) Keperluan yang ketat kepada kemuktamadan seperti yang dinyatakan dalam kes *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 2 MLJ 137 dan kes-kes lain dipakai sepenuhnya di sini. Untuk membicarakan semula kes yang telah dibicarakan dan diputuskan oleh mahkamah tertinggi bukan merupakan salah satu keadaan yang dibayangkan oleh k 137 untuk dilayan oleh Mahkamah Persekutuan (lihat perenggan 15).]

Notes

For cases on Federal Court's jurisdiction, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4411–4415.

For cases on parties to civil procedure, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 1366–1368.

Cases referred to

Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 2 MLJ 137; [2008] 5 AMR 377, FC (folld)

Chan Yoke Cher @ Chan Yoke Kher v Chan Teong Peng [2003] 3 MLJ 721, CA (refd)

Yap Yoke Luan & Ors v Ong Wee Tok & Ors [1984] 1 MLJ 23, FC (folld)

Legislation referred to

Probate and Administration Act 1959 s 60, 60(3)
Rules of the Federal Court 1995 r 137
Trustees Act 1949 ss 16, 17, 17(1), 59

DP Vijandran (Ong Kheng Leong with him) (Ghazi & Lim) for the appellant.
K Prakash (Shook, Lin & Bok) for the first and second respondents.
Mahinder Singh Dulku (R Rajasingam with him) (R Rajasingam & Co) for the third to eighth respondents.

Zulkefli FCJ (delivering judgment of the court):

[1] This is an application by the third to the eighth respondents by way of notice of motion to have the decision of the Federal Court in Civil Appeal No 02–7 of 2006(P) ('the appeal case') reviewed and reheard pursuant to r 137 of the Rules of the Federal Court 1995 ('RFC') to prevent injustice or to prevent an abuse of the process of the court.

BACKGROUND

[2] The relevant background facts leading to the present application by the third to the eighth respondents may be summarised as follows:

(1) Pursuant to the order of court dated 25 August 1975 made in Penang

High Court Originating Summons No 156 of 1975 the sale and purchase agreement in respect of landed properties belonging to the testator was entered into between the first and second respondents as duly appointed trustees by the court and the third to the eighth respondents as purchasers on 8 January 1979.

(2) The order of court dated 25 August 1975 referred to above, inter alia, reads as follows:

> *AND IT IS FURTHER ORDERED* that the testator's immovable property be sold with the approbation of the judge free from encumbrances (if any) and subject to the encumbrances (if any) of such of them as shall be agreed upon *AND IT IS FURTHER ORDERED* that the applicant's and the defendants' solicitors do have the joint conduct of the sale of all the immovable property of the testator still remaining unsold *AND IT IS FURTHER ORDERED* that the proceeds of sale of the testator's immovable property be paid into court to the credit of these proceedings subject to further orders.

(3) The sale and purchase agreement dated 8 January 1979 is subject to the following terms and conditions:

(i) The purchase price is calculated at the price of RM1.60 per square foot

(ii) Deposit is 5% of the purchase price or RM150,000.

(iii) The subject land being released from compulsorily acquisition by the state authority of Penang;

(iv) Formal sanction to sell in accordance with the Probate and Administration Act 1959 ('Act 97');

(v) Completion is within six months from the date of order of court sanctioning the sale by the trustees;

(vi) If the acquisition of the land is not released within two years from the date of the agreement, it shall be null and void;

(vii) Purchasers entitled to specific performance of the agreement;

(viii) Time shall be the essence;

(ix) If the purchasers default in payment of the balance purchase price, deposit will be forfeited by the trustees.

(4) The state authority duly released the said land from compulsory acquisition within two years but the vendors (the first and second

respondents) refused to apply for 'approbation of the judge' in respect of the sale in accordance with the express terms of court order dated 25 August 1975 referred to above.

(5) Pursuant to Civil Suit No 8 of 1981, the third to the eighth respondents (purchasers) sued the first and second respondents (vendors), inter alia, for specific performance of the sale and purchase agreement dated 8 January 1979 ('the first action').

(6) The appellant was allowed to intervene in the first action referred to above and was added as the fourth defendant.

(7) In the course of the proceedings of the first action the appellant also applied to amend his defence by including, inter alia, an allegation that the first and second respondents had no power to execute the sale and purchase agreement dated 8 January 1979. With regard to the allegation in the proposed amendment that the land was sold at an under value, the learned High Court judge refused leave to amend. No appeal was filed by the appellant against such refusal.

(8) On 9 September 1997, the court allowed the purchasers' claim in the first action and decreed specific performance in terms of the sale and purchase agreement dated 8 January 1979.

(9) The first and second respondents and the appellant appealed to the Court of Appeal vide Civil Appeal Nos P-02–556 of 1997 and P-02–593 of 1997 against the decree of specific performance of the High Court in the first action.

(10) On 21 February 2000, the Court of Appeal dismissed both the above appeals and affirmed the decision of the High Court in the first action but varied the order by decreeing specific performance on terms that the vendors apply to court for formal sanction as provided for in cl 8 of the sale and purchase agreement and that in the event the vendors defaulted in applying for a formal sanction, the third to the eighth respondents shall be at liberty to obtain the court's formal approval to sell the property to them and should the sanction be refused, it would be opened to the vendors to move for the decree to be vacated on the ground of impossibility of performance.

(11) By Originating Summons No 24–330 of 2000 dated 25 February 2000 ('the second action'), the first and second respondents applied to the High Court for permission to sell the subject land pursuant to cl 8 of the sale and purchase agreement dated 8 January 1979 in accordance with Act 97 at the market value of the said land at the date of the approval of the court or at such other price as may deem fit and proper by the court.

(12) The court made an order granting formal sanction of the sale and this is to all intents and purposes in tandem with the order of court dated 25 August 1975 and the order of the Court of Appeal dated 21 February 2000.

(13) The appellant appealed to the Court of Appeal vide Civil Appeal No P-02–804 of 2000 against the decision of the High Court sanctioning the sale referred to above.

(14) The first and second respondents did not appeal against the decision of the High Court sanctioning the sale referred to above and therefore the order of the High Court has become a final order in so far as the first and second respondents as vendors under the said agreement are concerned.

(15) The appellant's appeal was heard by the Court of Appeal and by a majority decision, the appeal was dismissed with costs.

(16) Pursuant to the leave granted by the Federal Court, the appellant appealed to the Federal Court vide Civil Appeal No 02–7 of 2006(P).

(17) The Federal Court by a unanimous decision on 24 January 2007 allowed the appellant's appeal with costs.

CONTENTION OF THE THIRD TO THE EIGHT RESPONDENTS

[3] It is the contention of the third to the eighth respondents that the Federal Court through the judgment of Augustine Paul FCJ in the appeal case had erred in law when the learned judge held that s 60(3) of Act 97 is applicable to the application made by the first and second respondents in the High Court for sanction of the sale and purchase agreement dated 8 January 1979 and that the principle of law decided in cases coming under s 60(3) of Act 97 are equally applicable to cases coming under s 60(3) of Act 97. Learned counsel for the third to the eighth respondents submitted that s 60(3) of Act 97 is only applicable for application made by the administrator of the estate intestate and s 60(3) of Act 97 is only applicable for application made by the executor of the estate of the testator. Learned counsel for the third to the eighth respondents further submitted that s 60(3) of Act 97 has no application whatsoever in respect of sale by executors.

[4] It was highlighted to us by learned counsel for the third to the eighth respondents that in this particular case, the sale was made by the trustees with the consent of all the beneficiaries of the estate of the testator and was made pursuant to the order of court dated 25 August 1975 subject to the approbation (sanction) of the judge. It was therefore contended that the relevant provisions applicable to the facts of this case are ss 16, 17 and 59 of the Trustees Act 1949 and that s 60(3) of Act 97 has no application in its

A entirety. In the circumstances of the case, it was submitted for the third to the eighth respondents that the very foundation of the judgment of the Federal Court is destroyed and therefore is a nullity.

B **[5]** The third to the eighth respondents also submitted that the appellant as a beneficiary has no right to challenge the sale except under s 17(1) of the Trustee Act 1949. The appellant's earlier attempt to challenge the sale on the ground of under valuation (by proposed amendment) was rejected by the court including the power of the trustees to enter into the sale and purchase agreement. The appellant is therefore estopped from contending otherwise.

C

SCOPE OF RULE 137

[6] It must be noted at the outset that r 137 of the RFC does not actually D confer jurisdiction on the Federal Court to hear any application or to make any order to prevent injustice or abuse of the process of the court. Rule 137 cannot be construed as conferring upon the Federal Court unlimited power to review its earlier decision for whatever purpose. The court only has the limited *'inherent'* power or *'inherent jurisdiction'* in order to maintain its E character as a court of justice. His Lordship Zaki Tun Azmi PCA (as he then was) in the case of *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 5 AMR 377 has succinctly laid out the limited or exceptional circumstances where the court has exercised its discretion to invoke r 137 at pp 388–389 as follows:

F

(a) That there was a lack of quorum eg the court was not duly constituted as two of the three presiding judges had retired (*Chia Yan Tek & Anor v Ng Swee Kiat & Anor* [2001] 4 MLJ 1; [2001] 4 AMR 3921).

G (b) The applicant had been denied the right to have his appeal heard on merits by the appellate court (*Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385; [2002] 1 AMR 1089).

(c) Where the decision had been obtained by fraud or suppression of H material evidence (*MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 2 MLJ 673; [2002] 3 AMR 2917).

(d) Where the court making the decision was not properly constituted, was illegal or was lacking jurisdiction, but the lack of jurisdiction is not I confined to the standing of the quorum that rendered the impungned decision (*Allied Capital Sdn Bhd v Mohd Latiff bin Shah Mohd & Another Application* [2005] 3 MLJ 1; [2004] 5 AMR 709).

(e) Clear infringement of the law (*Adorna Properties Sdn Bhd v Kobchai Sosothikul* [2006] 1 MLJ 417; [2005] 1 AMR 501).

(f) It does not apply where the findings of this court is questioned, whether in law or on the facts (since these are matters of opinion which this court may disagree with its earlier panel). (*Chan Yock Cher @ Chan Yock Kher v Chan Teong Peng* [2005] 1 MLJ 101; [2005] 4 AMR 693; [2005] 4 CLJ 29).

(g) Where an applicant under r 137 has not been heard by this court and yet through no fault of his, an order was inadvertently made as if he had been heard (*Raja Prithwi Chand v Sukhraj Rai* AIR 1941 FC 1).

(h) Where bias had been established (*Taylor & Anor v Lawrence & Anor* [2002] 2 All ER 353).

(i) Where it is demonstrated that the integrity of its earlier decision had been critically undermined eg where the process had been corrupted and a wrong result might have been arrived at (*Re Uddin* [2005] 3 All ER 550).

(j) Where the Federal Court allows an appeal which should have been consequentially dismissed because it accepted the concurrent findings of the High Court and Court of Appeal (*Joceline Tan Poh Choo & Ors v V Muthusamy* [2007] 6 MLJ 485; [2007] 5 AMR 725).

DECISION

[7] A challenge has been made by the third to the eighth respondents on the judgment of the Federal Court in the appeal case that it had embarked upon an exercise of unauthorised legislation or that there has been an infringement of the law by the court in arriving at its decision. With respect we could not agree with the contention of the third to the eighth respondents. It is necessary that we list out herein the four questions on which leave had been given that were before the Federal Court in the appeal case as follows:

(i) Whether the principle applicable to the sale of immovable trust property as stated in the Federal Court case of *Yap Yoke Luan & Ors v Ong Wee Tok & Ors* [1984] 1 MLJ 23 viz, the court in deciding whether the best possible price had been obtained for the estate, *the court is concerned that the price is a reasonable one not at the time the offer is made but at the time of the hearing of the application for sanction to the sale*, is also applicable in respect of sales of immovable properties belonging to the estate of a deceased by trustees who are appointed by an order of court.

(ii) Whether, when an order of specific performance in respect of an agreement for sale of trust property is specifically decreed to be *on terms that it be subject to obtaining of sanction*, the court is required to formally

A grant such sanction on the contract price or whether the court, may, in the exercise of its discretion, grant sanction at a price other than the contract price in the interest of the beneficiaries of the estate, or to refuse to grant of sanction.

B (iii) Whether the beneficiaries of an estate of person who dies testate should, in law, be entitled to the same measure of protection as that afforded to beneficiaries under the provisions of Probate and Administration Act 1959 and judicial pronouncement thereof.

(iv) Whether when a sale of estate property is expressly *subject to sanction* C *from the court, in accordance with the Probate and Administration Act 1959*, the primary function of the court is to consider the interest of the beneficiaries to the estate of the deceased and, in particular adhere to the legal principle that whether the price is a reasonable one is not at the time the offer was made but at the time of the hearing of the application D of the proposed sale.

[8] We noted that the Federal Court in the appeal case had dealt with and delivered judgment on all the above questions. The issues raised under this motion for review by the third to the eighth respondents were the very same E issues raised and argued before the Federal Court and considered in the judgment of the Federal Court.

[9] On the issue raised by the third to the eighth respondents that the decision of the Federal Court is contrary to law and relevant statutory F provisions and in particular the statutory provisions governing sale by trustees and executors, we find that the law in respect of this issue was dealt with at length in the judgment of the Federal Court in respect of questions No 3 and No 4 (see pp 32–40 and pp 41–51 of the judgment).

G **[10]** On the issue that parties cannot by contract or consent create or confer jurisdiction on a court where jurisdiction is wholly statutory as contended by the third to the eighth respondents, we find this issue was fully dealt with in the judgment of the Federal Court at pp 41–42 as follows:

H > One of the submissions of learned counsel for the respondents was that parties cannot confer such a jurisdiction on a court by agreement when there is no statutory provision to that effect on the authority of *Re Hooker's Settlement, Heron v Public Trustees & Ors* [1954] 3 All ER 321 and *Bank Negara Indonesia v Philip Hoalim (*56)* [1973] 2 MLJ 3. It was therefore contended that as s 60(4) of the I 1959 Act is only applicable to a sale by an administrator. Clause 8 of the agreement cannot confer such jurisdiction thereby rendering ineffective the requirement of the formal sanction.
>
> This submission overlooks s 60(3) of the 1959 Act and the factual matrix of this case.

[11] The Federal Court then proceeded to a detailed consideration of the matter and concluded at p 50 of its judgment as follows:

> The property and legality of cl 8 of the agreement is therefore discernible with ease. It has been inserted in the agreement to comply with the requirement of the order of court dated 25 August 1975 reproduced earlier. The restriction imposed on the disposal of property as stated in the will of the deceased therefore remains with the result that it can be disposed of only pursuant to an order of court as provided by s 60(3) of the 1959 Act. It cannot therefore be argued that cl 8 seeks to confer jurisdiction on a court without any authority.

[12] On the issue of *'fair value'* where the third to the eighth respondents alleged that the appellant ought not to have been heard especially where his application to amend his defence in the civil suit to raise the inadequacy of value was rejected and he had withdrawn his appeal, the Federal Court took cognisance of this issue as to what should be the fair value and found as follows at p 51 of the judgment:

> As stated in answer to question No 3, the duty of the court is to ensure that the estate benefits as much as possible so as to accord with established principles. It follows that the answer to question No 4 is that the relevant date for determining the reasonableness of the price of the property is the date of hearing of the application.
>
> The corollary to the answer to question No 4 is that it cannot be argued that a vendor cannot depart from the agreed price for the sale. As the reasonableness of the price is at the date of approval of the court it follows that the earlier agreed price can be disregarded.

[13] It is to be noted here that the adequacy of value was a live issue in the originating summons which gave rise to the current appeal and was an issue thoroughly argued by all parties at all three tiers. The Federal Court rightly considered this issue as stated above.

[14] The third to the eighth respondents have also challenged on the appellant's right to present his appeal before the Federal Court. They contended that the appellant is a stranger and thus lacks privity to the contract of sale to challenge or otherwise interfere with the performance of the trustees or to deny the purchasers their right under the agreement of sale. On this point it is our considered view that the appellant is a beneficiary of the estate and was also one of the defendants in the High Court. He was therefore a proper party with an interest in the outcome of the suit in the High Court. No application was made to strike out the defendant (appellant) as a party. As a party the appellant fully participated in the hearing. As a party to the civil suit the appellant was entitled to appeal against the High Court's decision and subsequently against the Court of Appeal decision.

[15] It is clear that the issues now raised by the third to the eighth respondents in this motion for review are actually issues that have been duly considered and dealt with in the judgment of the Federal Court in the said appeal case. The Federal Court did not agree with the third to the eighth respondents on these issues and on their interpretation and/or application of certain laws such as s 60 of the Act 97. We are of the view that this is not a suitable case for a review by us sitting as another panel of the Federal Court. We are now dealing with a matter of interpretation or application of the law that has already been made by the Federal Court. The findings of the Federal Court in this case both in law and on facts are matters of opinion. Even assuming we disagree with such findings made by the earlier panel of this court, that is not a ground that warrants us to review the decision (see the case of *Chan Yock Cher @ Chan Yock Kher v Chan Teong Peng*). The strict requirement as to finality as enunciated in the *Asean Security*'s case and other cases apply full force here. Otherwise there would be no end to the circular process that this motion for review seeks to initiate. It is our considered view to relitigate a case which has been heard and disposed of by this apex court is therefore not one of the circumstances envisaged by r 137 for this court (the Federal Court) to entertain.

[16] For the reasons above stated we would dismiss this application with costs.

Application dismissed with costs.

Reported by Kanesh Sundrum